

**RA BRIEF**  
**FLORIDA ASSUMPTION OF STATE 404 PROGRAM**

**Date Updated:** 02/27/2020      **Date Original Prepared:** 8/8/2018      **Priority:** 3

**EPA Goal Supported:** Cooperative Federalism, Rule of Law and Process

**Issue:** 404 Assumption by the State of Florida

**Location:** State of Florida

6 Components of Assumption Package and estimated percentages of completion

- Letter from Governor requesting program approval (0%)
- Complete program description (30%)
- Attorney General's statement (80%)
- EPA/DEP MOA (85%)
- Corps/DEP MOA (75%)
- Copies of all applicable state statutes and regulations, including those governing applicable state administrative procedures (70%)

**Context:**

1. Involved Parties: EPA, Corps, USFWS, NMFS, FDEP.
2. Interested parties: Florida Governor, the White House, other states, media, and various stakeholders (mining, developers, Tribes, environmental NGOs).
3. Florida is working on an official request to assume administration of a CWA section 404 program. Before making their request, Florida must pass a rule that will set up the required program elements. The Florida rulemaking timeline and possible legal challenges to that rulemaking, resolution of ESA coordination processes, and finalizing the Corps/FDEP MOA which identifies which waters the state will assume and which waters the Corps will retain, are currently driving the timeline.
4. Key outstanding issues include:

**Ex. 5 Deliberative Process (DP)**

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5. EPA continues to work with Florida and other stakeholders to address issues and finalize documents (e.g., Memoranda of Agreement) necessary for FL to complete its assumption package.

**Updates**

- FDEP staff sent EPA staff a copy of their revised proposed rule on 2/12/20. FDEP published Notices of Proposed Rule for the State 404 Program on 2/19/20. The 21 day comment period for the rule will end 3/11/20.

- FDEP submitted a draft Biological Assessment (BA) to EPA and the Services on 2/25/20 for review. They have asked EPA to submit comments within one month which will be compiled and incorporated by the contractor, GHD.

## **Ex. 5 Deliberative Process (DP)**

- EPA staff have an in-person meeting with FDEP 3/4-5/20 to discuss BA, rules, and components of the program description.